Supreme Court, U.S.
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No. 96-1138

In The

Supreme Court of the United States

October Term, 1996

UNITED STATES EX REL. RICHARD R. SYLVESTER,

Petitioner,

v.

NORTHROP GRUMMAN CORPORATION,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF FOR THE RESPONDENT IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT

Northrop Grumman Corporation ("Northrop") hereby advises the Court that it has shares publicly traded. Northrop currently has no parent corporation, nor does it have any subsidiaries or affiliates which have issued shares to the public. In May 1994, Northrop Corporation changed its name to Northrop Grumman Corporation.

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BRIEF FOR THE RESPONDENT IN OPPOSITION

Respondent Northrop Grumman Corporation ("Northrop") requests that the Court deny the petition for writ of certiorari seeking review of the decision of the Court of Appeals for the Ninth Circuit, C.A. No. 95-55220 (July 10, 1996). The decision of the Court of Appeals is not published, but is attached as Appendix A to the petition.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The jurisdiction of the District Court was based on the False Claims Act, 31 U.S.C. §§ 3729 *et seq.*, and specifically § 3730(b) & (h), and 28 U.S.C. § 1331. The jurisdiction of the Court of Appeals was based on 28 U.S.C. § 1291.

STATEMENT OF THE CASE

Petitioner Richard R. Sylvester brought both (a) claims for wrongful discharge (the "personal claims") and (b) *qui tam* claims in the name of the United States (the "*qui tam* claims"), under the False Claims Act, 31 U.S.C. §§ 3729 *et seq.* [CR 137]. Pursuant to 31 U.S.C. § 3730(b)(2), the United States declined to intervene in the action. *See* Notice of Declination of Appearance by the United States [CR 24]; Notice of Election by the United States Declining Intervention [CR 133]. On June 23, 1994, at the end of an all-day mediation attended by Sylvester

and presided over by a highly-respected, neutral mediator, Sylvester signed a Settlement Agreement with Northrop in which he and three co-plaintiffs agreed to dismiss their personal and *qui tam* claims in exchange for an aggregate payment, to be distributed among the plaintiffs according to their own agreements. *See* Declaration of John T. Boese [CR 385]; Settlement Agreement and General Release [CR 381 Ex. 3].

Sylvester subsequently asserted "buyer's remorse" and asked his lawyer and the District Court to rescind the agreement, claiming that he had not actually read the agreement before he signed it. [CR 419 Ex. K]. The District Court dismissed the action pursuant to the Settlement Agreement. Petition App. C. Sylvester then filed post-judgment motions under Fed. R. Civ. P. 60(b), which the District Court denied. [CR 417, 418 & 434; CR 417]. On appeal, the Court of Appeals affirmed the dismissal of Sylvester's action and denial of his post-judgment motions.

REASONS FOR DENYING THE PETITION

The Petition does not present grounds justifying a writ of certiorari. Sylvester fails to identify any significant issue at stake in this case, any reason to believe the courts below departed from the accepted and usual course of judicial proceedings, or any conflict among the Courts of Appeals. Sylvester admits that he signed a Settlement Agreement waiving *all* of his claims against Northrop in exchange for money and other valuable consideration. He argues, however, that his *qui tam* claims,

brought in the name of the United States under the False Claims Act, should not have been dismissed pursuant to the settlement, because Sylvester's lawyer did not adequately represent Sylvester's interests, because the Attorney General did not consent to the dismissal and because the agreement was unfair to the United States. These arguments are without factual or legal foundation and do not merit review by this Court.

First, Sylvester's belated change of heart about the wisdom of the settlement and his current dissatisfaction with his counsel present no novel issue of federal law and no grounds for further review of the decisions below. Second, this case does not, in fact, raise the issue whether the District Court could properly dismiss Sylvester's *qui tam* action over the Attorney General's objection, because the Attorney General did *not* object either (a) to dismissal of Sylvester's *qui tam* claims with prejudice *as to Sylvester* or (b) to the financial terms of the settlement. This Court, moreover, recently denied a petition for writ of certiorari by the United States which *did* raise the issue that Sylvester is trying to assert here. *See United States v. Northrop Corporation*, ___ U.S. ___, 117 S. Ct. 296, 136 L. Ed. 2d 215 (1996). Finally, the Attorney General, not Richard Sylvester, is responsible for asserting the interests of the United States as to the fairness of a *qui tam* settlement to the government, and in this case the Attorney General has raised no objections whatsoever to the fact that the United States received no money out of the Settlement Agreement.

I. SYLVESTER IS BOUND BY HIS SIGNATURE

Sylvester admits that *he signed the Settlement Agreement*. Sylvester does not claim he misunderstood the terms of the settlement when he signed it. Yet Sylvester – who trumpets his professional credentials as a JD, MBA and Ph.D., a professional economist and frequent expert witness – lamely asserts that he did not actually *read* the agreement before he signed it and that his own lawyer duped him. This claim is both incredible and irrelevant. The disputes between Sylvester and his former attorney over the quality of representation he received have no place in this appeal: They are matters outside the scope of this lawsuit, have no bearing at all on Northrop – the only defendant in this action – and are properly handled through the state court action that Sylvester has already brought against his former counsel.

The settlement of this case presents no extraordinary or controversial issues justifying further review. The District Court had inherent authority to dismiss Sylvester's suit pursuant to a settlement agreement. *See, e.g., In the Matter of Springpark Assocs.*, 623 F.2d 1377, 1380 (9th Cir.), *cert. denied*, 449 U.S. 956 (1980). Such a dismissal pursuant to settlement is reviewed on appeal only for abuse of discretion. "The district court's finding that [Sylvester] assented to the settlement and intended to be bound by it must be affirmed unless it is clearly erroneous." *Ahern v. Central Pacific Freight Lines*, 846 F.2d 47, 48 (9th Cir. 1988). " 'It is well recognized that settlement agreements are judicially favored as a matter of sound public policy.' . . . *Speed Shore Corp. v. Denda*, 605 F.2d 469, 473 (9th Cir. 1979)." *Ahern*, 846 F.2d at 48. Indeed, the Central

District of California, where this case was pending, now mandates that parties undergo settlement procedures and permits the parties to select their own settlement methods, such as the mediation which the parties undertook in this case. *See* Local Rule 23 of the Central District of California.

Sylvester cannot show that the District Court abused its discretion or was clearly erroneous in dismissing his claims, because Sylvester admitted that he signed the Settlement Agreement and failed to raise even a colorable allegation of fraud or unconscionability by Northrop. The Record before the District Court showed that the parties reached agreement on the settlement and executed the written Settlement Agreement at the end of an all-day mediation under the guidance of a well-known mediator, that Sylvester was represented by his counsel, and that Sylvester had at least the opportunity to make a considered judgment before signing the Settlement Agreement. Sylvester's claim that he failed to read the Agreement before signing does not excuse him from the agreement and its obligations. *See, e.g., Morta v. Korea Insurance Corp.*, 840 F.2d 1452, 1457-58 (9th Cir. 1988); *Alaska American Lumber Co., Inc. v. United States*, 25 Cl. Ct. 518, 529 (1992).

Sylvester, moreover, is a very sophisticated party. In his Petition, Sylvester states that he holds a JD from Loyola Law School, an MBA from the University of Southern California and a Ph.D. from the University of California at Los Angeles, and that he is an economist "listed for over a decade in Marquis' *Who's Who in the World, Who's Who in Finance and Industry,* and *Who's Who in the West.*" *See* Petition at 6-7. Sylvester also has taught business law courses at USC, UCLA, Loyola and in the

California State University system, has written textbooks in tax law, and has testified as an expert witness in United States and California courts. *See* Declaration of Richard R. Sylvester ¶ 2 [CR 419]. Sylvester cannot now plausibly claim that he failed to understand the meaning of the mediation process or the significance of signing his name to the Settlement Agreement.

Sylvester also argues that his decision to settle *all* his claims against Northrop is somehow rendered void because he asserts that his *qui tam* allegations had merit and were worth far more than he received in settlement. If that kind of argument had any bearing on the validity of a negotiated settlement, then no settlement would be secure. Sylvester may have decided after the fact that he had struck a "bad deal" but "[i]t is not the function of the Court . . . to relieve intelligent and educated people of the bargains they choose to strike." *Coleson v. Inspector General of Department of Defense*, 721 F. Supp. 763, 769 (E.D. Va. 1989). The actual merits of a claim are irrelevant to the validity of a party's knowing settlement of the case. *See, e.g., In the Matter of Springpark Assocs.*, 623 F.2d at 1380 (when the parties enter a settlement agreement " 'the actual merits of the controversy become inconsequential' "); *A.J. Industries, Inc. v. Ver Halen*, 75 Cal. App. 3d 751, 759-60, 142 Cal. Rptr. 383 (1977). Sylvester's claim that he struck a bad deal presents no grounds for review by this Court.

II. THE UNITED STATES DID NOT OBJECT TO DISMISSAL OF SYLVESTER'S *QUI TAM* CASE

This case does not raise the question whether the District Court can dismiss a *qui tam* action over the

Attorney General's objections, because, contrary to Sylvester's assertions, the Attorney General did not object to the dismissal of Sylvester's *qui tam* claims or to the fact that the settlement allocated no money to the *qui tam* claims and, therefore, provided no payment to the United States. Instead, the Justice Department submitted only a cursory, written objection to dismissal of the action *"with prejudice as to the United States."* The Justice Department did not appear at the District Court hearing to enforce the settlement, did not participate at all in Sylvester's appeal to the Ninth Circuit, and has not petitioned this Court for review of the decisions below. At no time has the Justice Department made any objection to the dismissal of *Sylvester's* claims pursuant to the settlement. Accordingly, the petition raises no issue for this Court to review.

Following the execution of the Settlement Agreement, Northrop filed its Motion for Partial Dismissal Pursuant to Settlement and served the motion on the Assistant United States Attorney who had been acting for the government on this case since its inception in 1988. [CR 376]. The United States Attorney then filed its "Notice of Opposition of United States to Proposed Settlement." *See* Appendix A hereto [CR 411]. In its Notice of Opposition, the government clearly stated that its *only* objection was that the parties sought dismissal with prejudice as to the United States on the *qui tam* allegations. The government had twice declined to intervene in the *qui tam* suit and had never sought to play any role whatsoever in the prosecution of Sylvester's claims, but pointed out that the order Northrop sought would permanently bar the government from pursuing the false claims allegations Sylvester had raised. The government

stated: "Accordingly, the government objects to the proposed settlement *to the extent* that it would dismiss the False Claims Act allegations with prejudice as to the United States." [CR 411 at p. 2 (emphasis added)]. The government raised no other objection or concern in response to Northrop's motion to dismiss the action.

Moreover, when Northrop moved for entry of final judgment, the United States made no appearance and raised no objection. When Sylvester filed for appeal, the United States again made no appearance and did not join the appeal.

Accordingly, the United States determined not to prosecute this action against Northrop, not to object to the dismissal of Sylvester's claims, and not to appeal the dismissal of Sylvester's false claims allegations with prejudice. The Attorney General raised no substantive objection to the settlement. Sylvester, therefore, cannot accurately argue that this Court should grant his petition because the United States did not consent to the dismissal of his claims against Northrop.

In addition, this Court recently denied a petition for writ of certiorari by the United States in a case that *did* squarely raise the issue Sylvester tries to rely upon in his petition. In *United States ex rel. Killingsworth v. Northrop Corporation*, 25 F.3d 715 (9th Cir. 1994), *cert. denied*, ___ U.S. ___, 117 S. Ct. 296, 136 L. Ed. 2d 215 (1996), the Ninth Circuit ruled that, where the United States did not intervene in the case, the District Court may dismiss a *qui tam* action under the False Claims Act pursuant to a settlement between the private plaintiff and defendant, even if the United States objects to the settlement, so long

as the District Court provides the government an opportunity to present its objections. 25 F.3d at 720-23. In *Killingsworth*, unlike the present case, the United States objected to the financial terms of the settlement, pressed its objections before the District and Circuit Courts, and petitioned this Court for writ of certiorari. This Court denied the petition.

Sylvester also argues that this case presents a split in the Courts of Appeal because other Circuits have not followed the Ninth Circuit's holding in *Killingsworth* that District Courts can, in appropriate circumstances, dismiss a *qui tam* action over the government's objection. This argument is baseless. Even if this case did present the issue decided in *Killingsworth*, there is no split or disagreement in the Circuit Courts, because no other Circuit has addressed this issue. Sylvester fails to identify any decision from another Circuit in conflict with the Ninth Circuit's decision in the present case. *See* Petition at 18-19, 25.

III. SYLVESTER HAS NO STANDING TO ARGUE THAT THE SETTLEMENT IS UNFAIR TO THE UNITED STATES

Sylvester argues that this Court should review the dismissal of his *qui tam* action because the Settlement Agreement was unfair to the United States in that it provided for no payment to the government on Sylvester's *qui tam* claim. This argument is frivolous. There is no dispute that the United States received notice of the Settlement Agreement and was fully apprised of its terms. The United States made no objection to the financial

terms of the settlement and has never suggested to any Court or party that it finds the agreement unfair or inappropriate.

Normally, only the Attorney General and her designees may represent and prosecute actions for the United States. The standing of a *qui tam* relator to bring an action in the name of the United States rests on the statutory "assignment" of the government's cause of action to the relator through the express *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b). *United States ex rel. Kelly v. Boeing Co.*, 9 F.3d 743, 747-49 (9th Cir. 1993), *cert. denied*, 510 U.S. 1140 (1994). In assigning certain rights to the private plaintiff, the Act does not make a wholesale transfer of power from the Attorney General to the *qui tam* relator. *Id.* at 760. Instead, the Act delineates the rights and powers of the private relator, and the rights and powers of the Attorney General, to act on behalf of the United States in connection with such actions. Among the authority which the Act allocates to *the Attorney General* is the right to object to a settlement reached by the private relator and defendant on the grounds that the settlement does not give the government a fair share of the settlement. *Killingsworth*, 25 F.3d at 723. It is precisely such reservations of power to the Attorney General that, according to the Ninth Circuit, save the *qui tam* provisions from violating the constitutional Separation of Powers by giving too much governmental power to private prosecutors. *Id.* at 724 (citing *Juliano v. Federal Asset Disposition Ass'n*, 736 F. Supp. 348 (D.D.C. 1990), *aff'd*, 959 F.2d 1101 (D.C. Cir. 1992) and *Kelly*, 9 F.3d at 753 n.10). The False Claims Act does not authorize the relator to second-guess and override judgments of the Attorney

General in exercising – or choosing not to exercise – those powers which the Act allocates to the Attorney General. Sylvester, therefore, has no standing to object to the settlement on the grounds that it is unfair to the United States.

Moreover, even if he did have standing to avoid his own commitments by pleading the interests of the United States, Sylvester's argument is utterly self-contradictory: if Sylvester does, as he claims, stand in the shoes of the Attorney General in this case, then he bound the United States by signing the Settlement Agreement. Sylvester cannot simultaneously claim the right to speak for the government *and* the right to disavow his own actions in the name of the government.

CONCLUSION

For all the foregoing reasons, the Petition for a writ of certiorari should be denied.

Respectfully submitted,

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February 12, 1997

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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, *ex rel.*, JEAN-FRANCOIS TRUONG, Plaintiffs, v. NORTHROP CORPORATION, a California Corporation, Defendant.	NO. CV 88-0967-MRP(Rx) NOTICE OF OPPOSITION OF UNITED STATES TO PROPOSED SETTLEMENT

The United States files this Notice of Opposition to Proposed Settlement pursuant to the requirements of this Circuit's construction of the relevant portions of the False Claims Act, 31 U.S.C. § 3729 *et seq.*. See *U.S. ex rel., Killingsworth v. Northrop Corp.*, 25 F.3d 715, (9th Cir. 1994).

The United States has monitored the course of this litigation since declining intervention. The government has reviewed the terms of the proposed settlement and has solicited information and explanations from the parties regarding the terms of the agreement.

The proposed agreement allocates 100% of the proceeds to the relators' personal claims and nothing to the resolution of the False Claims Act counts. Nonetheless, the settlement purports to dismiss *with prejudice* as to the United States the False Claims Act allegations, thus forever baring [sic] the government from pursuing the allegations should changed circumstances so warrant. Accordingly, the government objects to the proposed settlement to the extent that it would dismiss the False Claims Act allegations with prejudice as to the United States.

Unlike the situation in *Killingsworth*, giving effect to the United States' objection here does not deprive the relator of any monetary recovery or require that the case be litigated further, but merely requires that the terms of the otherwise agreed-upon dismissal be modified.

DATED: August 18, 1994.

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